Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Rural Call Completion	)	WC Docket No. 13-39

COMMENTS OF SPRINT NEXTEL CORPORATION

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Sprint Nextel Corporation ("Sprint"), pursuant to the Public Notice released on April 18, 2013 (DA 13-780), hereby respectfully submits its comments on the Notice of Proposed Rulemaking (NPRM) in the above-captioned proceeding regarding measures "to help address problems in the completion of long-distance calls to rural customers."[1]

I. INTRODUCTION AND EXECUTIVE SUMMARY.

Sprint shares the Commission's concern that calls to rural customers are completed properly and reliably, and firmly opposes practices such as spoofing and blocking of calls to certain exchanges as a means of evading legitimate access charges. Sprint has strong financial, competitive, and regulatory incentives to provide top quality service to all of its customers. Sprint has worked with rural carriers to address routing issues as they arise, but Sprint has not observed an "epidemic" in rural call completion or call quality problems for Sprint-originated or Sprint-handled long distance traffic. Indeed, a recent call completion test in Nebraska designed and conducted jointly by Sprint and rural local exchange carrier (RLEC) representatives, and overseen by a neutral entity, resulted in a *99.79%* rural call completion rate for Sprint traffic.

[1] NPRM released February 7, 2013 (FCC 13-18), para. 1.

Rather than impose industry-wide reporting obligations, the Commission should continue to work with carriers to identify whether the issues raised are the result of technology compatibility, auto dialers, specific business plans, or some other problem. While there may be localized issues, it is unclear that there is an industry-wide epidemic. Indeed, carriers have been engaged in extensive investigations of this issue over the past year, and no single root cause of the rural call completion issues raised by some carriers has been established. The NPRM proposes extraordinarily broad-brush reporting and data retention requirements whose costs are almost certain to exceed any likely benefit by a large margin, and whose efficacy is in substantial doubt.

Before considering the adoption of broad and onerous data collection and reporting rules, the Commission should comprehensively examine the information proffered as "evidence" of a widespread problem with rural call completion and call quality -- an analysis which has not and cannot be done based on the existing public record. Second, it must ascertain the root cause(s) of any identified problems. Third, it must consider whether the root cause(s) require supplemental regulatory intervention, or whether market forces and existing regulatory tools are sufficient to lead to the desired outcome or the preferred behaviors.

The Commission should consider new or additional regulatory measures only as a last resort (*i.e.*, where market forces or existing regulatory tools are insufficient). Any new measures should be tailored to address a clearly defined "unjust and unreasonable" practice, and should be implemented only if they promote the public interest and if their costs are outweighed by their expected benefits. If it turns out that the RLECs' concerns are due to the specific actions of a limited number of identified carriers or a particular

problem associated with the conversion to IP formats, the appropriate course of action would to implement carrier-specific corrective measures or to develop new technical standards rather than to impose onerous data retention and reporting obligations on whole classes of carriers.

II. EVIDENCE OF AN INDUSTRY-WIDE "EPIDEMIC" IN RURAL CALL COMPLETION PROBLEMS IS CONTRADICTORY.

Sprint shares the Commission's interest in ensuring that calls to rural customers are completed properly and reliably. As a service provider in the highly competitive retail long-distance voice market, Sprint has a strong incentive to provide reliable, high quality service to all of its subscribers. If its customers' calls do not complete or are of poor quality, Sprint will feel the impact sharply and painfully: unhappy customers will contact our call centers and their account representatives; subscribers will demand service credits and sometimes cancel service; the retail and wholesale service rating entities (*e.g.*, J.D. Powers and Associates; the organization which computes the American Customer Satisfaction Index; Atlantic-ACM) will take immediate notice, with repercussions to the Sprint brand; and regulatory bodies (including this Commission) will serve us with customer complaints and investigative inquiries. For every call that does not complete or is of poor quality, there is both a dissatisfied caller and a dissatisfied called party. While the RLECs have portrayed themselves and their end users as the harmed or inconvenienced parties, Sprint and its customers are equally harmed or inconvenienced if Sprint calls to rural areas are not being completed.

In 2011, the RLEC associations began to raise the issue of the "nationwide and industry-wide epidemic" of "problems related to the transmission and completion of calls

placed to customers served by rural local exchange carriers."[2] The RLECs have continued the "epidemic" drumbeat, issuing summaries of a call completion test project in the spring of 2012[3] and a call completion survey in the fall of 2012[4] which purported to show on-going, severe problems with rural call completion. The RLECs have stated that "the problems appear to arise from how originating carriers choose to set up the signaling and routing of their calls,"[5] and have called upon the Commission to take steps "…to ensure that routing practices by originating carriers and service providers produce high quality, reliable call completion results in all areas of the country."[6]

Although the details of the RLEC studies have not, insofar as Sprint is aware, been made publicly available or subjected to independent review, these studies appear to have been accepted at face value. The instant NPRM presumes the existence of a widespread problem with rural call completion, and that such problem is due to intermediate providers that "may be failing to deliver a significant number of calls to rural telephone company customers" and retail long-distance providers that "may not be adequately examining the resultant rural call completion performance."[7] This conclusion

[2] *See, e.g.*, March 11, 2011 *ex parte* letter from Michael Romano, NTCA, to Marlene Dortch, FCC, filed in WC Docket No. 07-135, CC Docket No. 01-92, and WC Docket No. 11-39 ("March 11, 2011 RLEC *ex parte* letter"). Representatives of WTA, NECA, OPASTCO, and three RLECs also participated in the March 10, 2011 meeting with FCC staff.

[3] *See, e.g.*, "Rural Telecom Associations Announce Results of Call Completion Test Project," press release issued May 17, 2012 by NECA, NTCA, OPASTCO, and WTA ("May 17, 2012 RLEC press release"), available at <http://www.ntca.org/current-press-releases/rural-telecom-associations-announce-results-of-call-completion-test-project.html>.

[4] *See, e.g.*, November 15, 2012 *ex parte* letter from Colin Sandy, NECA, filed in WC Docket No. 07-135, CC Docket No. 01-92 and WC Docket No. 11-39 ("November 15, 2012 RLEC *ex parte* letter").

[5] March 11, 2011 RLEC *ex parte* letter, p. 2.

[6] May 17, 2012 RLEC press release, p. 1.

[7] NPRM, para. 1.

is premature. Moreover, this conclusion is inconsistent with other evidence, and could result in harmful regulatory overkill.

A. The RLEC Studies Have Not Been Subjected to Independent Review or Analysis.

In the instant NPRM, the Commission has cited two sources as evidence of the existence of "serious and widespread" problems in rural call completion: submissions and statements by RLECs and RLEC associations,[8] and informal consumer complaints filed with the Commission.[9] As discussed below, neither of these sources is dispositive, and the Commission should defer consideration of any new rural call completion reporting rules until the information on which it has relied is fully vetted in the public record, and until it has considered any contrary or supplemental information.

While the RLECs have released summaries of the results of their rural call completion studies, the test calls and surveys themselves have never, to Sprint's knowledge, been made publicly available for review. Thus, there is no way to assess the validity of either the methodology or the results of these studies. To list just a few examples, interested parties do not know:

- Who participated in the RLECs surveys -- RLEC representatives, answering questions to the best of their recollection? Randomly selected end users? Pre-selected end users who had previously registered a complaint? Did the individual responding to the survey have direct knowledge of the matter at hand?

- What questions were posed in the survey, and were the questions neutral or leading? Results are likely to vary dramatically depending upon whether a RLEC representative was asked "do you recall hearing about any cases in which one of your customers says he or she experienced a

[8] The NPRM does cite *ex parte* letters from NARUC and a group of state PSCs (footnote 2); however, the NARUC letter relies upon information generated by RLECs or RLEC associations, and the State PSC letter is an expression of general concern but does not cite specific information.

[9] NPRM, footnote 34.

problem with call completion or quality," versus "document the number of cases in which one of your customers reported a specific instance in which a known caller was unable to complete a call to the customer's wireline telephone line within the past 7 days, and be prepared to provide date/time/telephone numbers involved."

- How was a "problem" defined? Here again, results can vary dramatically depending upon whether call quality is measured in defined engineering terms (X milliseconds of delay or Y milliseconds of jitter), or in subjective, check the box terms ("call quality wasn't very good").

- How was call completion defined? For example, did the RLEC consider a call that rang 15 times but went unanswered to constitute a call completion problem? What if no one was at home to answer the call, and the called party didn't have voice mail or an answering machine? Was a misdialed (by the originating consumer) call to an invalid or wrong number considered an incomplete call?

- Were the call completion percentages computed based on all calls placed, or were the data adjusted to account for factors such as out-of-coverage-area dropped calls (*i.e.*, when a mobile customer moves out of signal range), or callers (including telemarketers or other mass-dialers) that hang up before the called party picked up the ringing telephone?

- Were problem calls associated with a particular originating number or group of originating numbers to a significant degree? If so, were those numbers assigned to a particular carrier?

- Was there a significant problem with spoofing, and if so, was that traceable to a particular caller or carrier?

- Under what geographic conditions were test calls from mobile phones placed? Terrain, distance from a cell tower, and in-building location (third floor subterranean garage vs. front lobby) can significantly affect call quality and possibility of dropped calls.

- Were the survey and test call sample sizes statistically significant?

- Did the survey time periods and test calls reflect "business as usual" conditions, or did they encompass any unusual events (*e.g.*, mass calling events, bad weather, public safety emergencies) which could have affected call completion rates?

- The RLECs provided summary data on the number of complaints they received. What was the volume of calls that did complete successfully?

- How did the RLECs identify the originating carriers they cited as being involved in a call completion complaint? Were there a large number of "offending" originating carriers, or were complaints/test call problems attributable primarily to one or two originating carriers?

- What steps were taken to ensure that the information provided was accurate? For example, the RLEC associations presented information from their October 2012 survey on "carriers known to have originated calls to your subscribers that resulted in a customer call completion complaint during the period March 2012 through August 2012." If the complaint was filed by the called party, it is not clear how he or she would know that a call was not completed, much less the identity of the caller's service provider. Indeed, even the LECs might have trouble identifying the interexchange carrier to which a number was assigned. For example, Sprint has been identified as the originating carrier in error because the problem number involved had previously been ported from Sprint to another service provider.

- What were the parameters of the call completion test project reported by the RLECs in May 2012? Because almost no detail has been provided to the public about the calls placed by RLEC "volunteers,"[10] there is simply no way to verify whether the project was properly structured or the validity of the claimed results.

- It is not clear whether the RLEC studies included rural CLECs or RBOCs with rural exchanges. However, neither the rural CLECs nor the RBOCs have complained vocally about a rural call completion problem. Why not?

- The RLECs have asserted that rural call completion problems are due to least cost routing by interexchange carriers trying to avoid payment of access charges. However, intrastate switched access charges assessed by rate-of-return LECs are declining with the transition to an intercarrier compensation system of bill-and-keep.[11] While switched access rates remain far above economic cost, switched access arbitrage opportunities have and will continue to narrow. Why, then, would rural call completion problems accelerate to "epidemic" proportions because of arbitrage-inspired least cost routing by interexchange carriers?

[10] May 17, 2012 RLEC press release, p. 1.
[11] *Connect America Fund, et al.*, 26 FCC Rcd 17663 (2011) ("*ICC/USF Transformation Order*").

In short, the summary results provided by the RLECs raise as many questions as they answer and are not sufficient to conclude that there is an industry-wide problem with rural call termination.

Reliance upon informal consumer complaints to confirm or establish the existence of a rural call termination "epidemic" is similarly problematic. While Sprint does not dispute that informal consumer complaints about rural call completion have been filed, the filing of such complaints is not dispositive of a widespread problem. Indeed, there is some evidence that end users may have been actively encouraged to file complaints about least cost routing by their RLEC service provider even when it was unclear that least cost routing was in fact involved.[12] Many of the complaints about rural call completion which Sprint has investigated have been extremely vague (*e.g.*, lacking specifics about date and time); were otherwise unverifiable (*e.g.*, the Sprint customer/calling party declined to cooperate with the investigation or did not otherwise provide actionable information); involved customer issues; or involved calls for which Sprint had no record. Indeed, Sprint has investigated "least cost routing" complaints which did not involve intermediate carriers at all (traffic to the RLEC's end users was carried over Sprint's Feature Group D network), as well as cases in which the end user complained of problems both placing and receiving calls.

While "hundreds" of complaints may have been filed with the Commission, this is only a tiny fraction of the billions of calls that have been successfully delivered to rural

[12] In communicating with their end user customers, some RLECs liberally attribute call completion problems to least cost routing, implying that it is an inherently bad practice which should be eliminated, and even provide verbiage for their subscribers to use in filing a complaint. *See, e.g.*, <http://www.twinvalley.net/lcr/>; <http://www.vtc.net/page.php?page=Long_Distance_Update>. The Commission should *strongly* discourage RLECs from making unsupported and overbroad statements.

customers.[13] Finally, even where the informal consumer complaints are valid, the public record is devoid of any analysis which shows whether such complaints primarily involve one or a small number of specific carriers.

B. Sprint Carefully Monitors Both Its Direct Routed Traffic and Its Traffic Routed via Intermediate Carriers, and Is Unable to Corroborate the Results of the RLEC Studies.

Sprint, like other interexchange carriers, does route some of its toll traffic over the networks of other carriers, in addition to serving as a wholesale network provider to other carriers. Such arrangements have commonly been used for decades, where a carrier does not have its own facilities or does not provide a requested service in a given region; to handle overflow traffic; for traffic routing redundancy; or where the intermediate carrier can complete a call more efficiently than the originating carrier can do itself. In each of these cases, use of intermediate carriers improves the quality, reliability and cost of services provided to the end user, and thus is patently in the public interest. It is simply not the case that intermediate carriers are used purely or primarily to perpetrate arbitrage "schemes" intended to deprive local exchange carriers of their lawful access revenues and, as an unfortunate consequence, prevent RLEC end users from receiving all of their calls.

When Sprint does route traffic through an intermediate carrier, it makes a concerted effort to ensure that high call quality is maintained. For example, all of Sprint's arrangements with its intermediate carriers include the following:

- Defined performance and call quality metrics (multiple categories);

[13] According to Table 5.2 of the most recent Universal Service Monitoring Report (released 2012 by the Federal-State Joint Board on Universal Service), there were 208.542 billion ILEC interstate switched access minutes of use in 2011. Assuming that the average long distance call lasted for 4 minutes, and that 20% of calls terminated to rural end users, then there would have been roughly 10.4 billion calls to rural customers.

- Provisions to allow for corrective action (including contract termination) if the intermediate carrier does not meet the mandated performance standards;
- Specification that the intermediate carrier is paid only for completed calls;
- Prohibition on any form of call looping;
- Prohibition on the use of "play early" or "false ringback" tones;
- Prohibition on any practice that seeks to improperly classify the jurisdiction of a call, or that alters calling party information or other signaling parameters.

Sprint has a robust monitoring system in place to track and evaluate intermediate carriers' performance – indeed, Sprint recently invested $1.5 million in a new platform to enhance its monitoring capabilities – and monitors the service performance of each of its intermediate carriers on a daily basis. Sprint also conducts individual performance review meetings with each of its intermediate carriers on a monthly basis, discussing the intermediate carrier's success at meeting the specified service metrics, and reviewing all trouble tickets (issues identified and reported by Sprint, by a Sprint customer, and by a LEC). And, of course, Sprint carefully monitors its own performance as regards both its retail and its wholesale customers. Sprint's network reports have not shown any deterioration in intermediate carrier performance, and do not confirm the existence of an "epidemic" rural call completion problem.[14]

Further evidence that Sprint is successfully completing the vast majority of its calls to rural numbers is provided from a recent test jointly designed and conducted by

[14] Nonetheless, Sprint has cooperated fully with RLECs that do assert the problem. For example, Sprint has tasked a group within its network organization to investigate and address rural call completion issues, and has provided their contact information to RLECs (directly, through ATIS, and in numerous regulatory proceedings/workshops) so that the RLEC representative can work directly with knowledgeable Sprint representatives who have authority to take corrective action where warranted. Sprint also has established a dedicated Access Trouble Hot Line and Access Trouble Report email ID that other carriers can use to report call completion issues.

Sprint and LEC representatives, and overseen by a neutral third party, the Nebraska PUC. In March 2013, Sprint participated in call completion tests conducted with 14 different LECs in rural exchanges. These tests resulted in a call completion rate of ***99.79%*** for Sprint. Only four of the test calls did not complete – two because the line was busy, and two because of ring no answer/requested time out.[15] Calls were placed from multiple Sprint numbers, and terminated to 204 numbers selected by the terminating LEC. None of the test calls had any documented problem with post dial delay, and no quality of service problems were noted.

While Sprint does not know the results of call completion tests involving other interexchange carriers, and of course cannot speculate on the reasons for any poor results which other carriers may have experienced, we would note that there are numerous factors other than intermediate carrier routing practices which could cause rural call completion rates to differ from non-rural call completion rates, with the differing completion rates still being entirely reasonable.[16] For example:

- To the extent that RLECs still use older switches, they may be at greater risk for dial-through fraud. Perpetrators may use auto-dialers to identify which numbers in the block of numbers assigned to a rural exchange are invalid, disconnected, or unassigned. The perpetrators use the invalid numbers to gain access to the RLEC switch before the intercept message is returned, and use the unauthorized access to place fraudulent calls. Extensive use of auto-dialers (see below) and the deliberate placement of calls to invalid/unassigned numbers could depress call completion rates significantly.

- The increasing volume of IP traffic and more efficient encoding/decoding algorithms could affect rural call completion rates, particularly for fax transmissions. RLECs may have few or no SIP trunks to end user customers; older RLEC switches may not be able to accommodate IP traffic as seamlessly as newer switches; the transmission path as engineered by the RLEC may be unable

[15] Calls to invalid telephone numbers were considered to be completed calls. Even if calls to invalid numbers were considered incomplete, Sprint's call completion rate was still 97.8%.
[16] NPRM, para. 13.

to fully accommodate certain algorithms. Moreover, end user fax machines might be so sensitive to delays associated with certain protocols that the fax transmission fails. As IP calls account for an ever-increasing percentage of traffic -- certainly a desirable outcome -- the problem of incomplete calls over older network facilities and end user equipment may increase.

- Some calls are failing to complete, or are being re-routed to other service providers, because information in the carrier's routing table is incorrect. In some cases, this may be due to an interexchange carrier's failure to update its tables in a timely fashion when updated information is available. In other cases, this may be due to the actions of the LEC itself. For example, Sprint is aware of situations in which an RLEC rehomed its codes to other tandems without updating LERG, making it impossible for IXCs to correctly terminate calls to that RLEC's local customers. There are also cases in which multiple RLECs rehomed their codes from a nearby tandem to another tandem hundreds of miles away, purely to engage in local transport mileage pumping – a practice which is, in Sprint's view, clearly unreasonable.

- Telemarketers and other auto-dial users may account for a higher percentage of traffic (proportionately) to rural than to non-rural areas. Telemarketers will frequently abandon a ringing call if another call in the queue is answered (that is, they sacrifice a ringing call for an answered call), and predictive auto-dialers may have built-in parameters that will terminate a call after ringing starts but before the call is answered. Both factors can depress the call completion rate, and the queueing practice can increase the incidence of dead air.

- Access facilities terminating at rural switches are generally of smaller capacity than are facilities to non-rural switches because of overall traffic volumes. Some carriers may experience lower-than-average call completion rates if their access facilities are taxed and they have insufficient overflow arrangements in place.

- Carriers generally have a higher percentage of indirect terminations to small RLECs than they do with major urban LECs. No analysis appears to have been done to determine if any of the claimed rural call completion issues are related to the routing of traffic through access tandems owned by other parties. Moreover, remote host arrangements established by RLECs tend to increase post-dial delay, which may increase the incidence of premature hang-up by the caller.

Sprint strongly urges the Commission to consider these factors, and test results such as that generated by the Nebraska test, in evaluating the need for new, very broad data retention and reporting requirements. Particularly in light of the burden imposed by the proposed requirements, discussed in Section III below, the Commission should be

very cautious about over-reacting to ambiguous and contradictory evidence of a rural call completion "epidemic."

III. THE PROPOSED DATA RETENTION AND REPORTING REQUIREMENTS ARE OVERBROAD, AND THEIR COSTS ARE LIKELY TO OUTWEIGH ANY BENEFITS.

In the instant NPRM, the Commission has proposed new data collection, retention, and reporting rules, to be imposed upon facilities-based interexchange carriers, CMRS providers, interconnected VoIP service providers, and local exchange carriers with more than 100,000 retail long distance subscribers.[17] These proposed rules[18] would require facilities-based originating long distance providers to

- measure the call answer rate (calls answered divided by calls attempted) for each rural operating company number (OCN) to which 100 or more calls were attempted during the calendar month for several categories. Call attempts are to be categorized by source and terminating provider type (originating provider to rural telephone company; originating provider to non-rural LEC; first facilities-based provider to rural telephone company; first facilities-based provider to non-rural LEC);
- measure the overall call answer rate for non-rural call attempts;
- report in electronic form the monthly call answer rate (as well as the number of calls attempted and the number of calls answered) for rural OCNs with 100 attempts or more, and the non-rural monthly overall average, once per quarter;
- record and retain for the 6 most recent complete calendar months the calling party number; called party number; date and time; whether the call attempt was handed off to an intermediate provider and if so, which intermediate provider; whether the call attempt was going to a rural carrier and, if so, which rural carrier as identified by its OCN; whether the call attempt was interstate; whether the call attempt was answered.

[17] NPRM, paras. 13, 31.
[18] NPRM, paras. 20-25.

The NPRM also establishes two safe harbors.[19] The first relieves a provider of the proposed call completion data retention and reporting obligations if it certifies on an annual basis that it restricts by contract directly connected intermediate providers to no more than one additional intermediate provider, and that it agrees to reveal the identity of the intermediate provider to the Commission and RLEC; and certifies that it has a process in place to monitor the performance of its intermediate providers. The second safe harbor would allow the originating carrier to retain call attempt data for 3 rather than 6 months, and relieves it of the quarterly reporting obligation, if it certifies on an annual basis that for each of the previous 12 months, its average call answer rate for rural carriers was no more than 2 percent less than the non-rural rate; that the call answer rates for 95% of rural carriers were no more than 3% below the average rural call answer rate; and that it has a process in place to investigate its performance in completing calls to rural telephone carriers for which the call answer rate is more than 3% below the average of the rural call answer rate for all rural telephone companies to which it attempted more than 100 calls.

These proposed regulations should not be adopted for several reasons.[20] First, they are not necessary to prevent arbitrage, as the Commission's intercarrier compensation reforms will reduce and eventually eliminate the incentive to engage in jurisdictional arbitrage. Second, the costs of implementing and complying with the proposed regulations are estimated to be very high, and likely to exceed any purported benefits by a significant margin. Third, the proposed regulations are overbroad, imposing a significant burden on an entire class of carriers, most of which are not likely responsible

[19] NPRM, paras. 32-35.

[20] The Commission also has proposed a rule that would prohibit originating and intermediate providers from causing audible ringing to be sent to the caller before the

for the claimed rural call completion problem; and contain arbitrary and undefined standards.

As demonstrated above, the public record does not support a conclusion that there is an industry-spread or epidemic problem with rural call completion. If, contrary to Sprint's analysis, the Commission concludes that a broader problem does exist, it should allow sufficient time to determine the efficacy of its prior aggressive actions to address rural call completion concerns. If the Commission determines that a more limited problem exists, involving the actions of relatively few carriers and attributable to multiple factors rather than entirely to least cost routing practices, it should take targeted actions to remedy identified unreasonable practices by any identified bad actors rather than imposing onerous data retention and reporting obligations on originating carriers as a whole.

A. The Proposed Data Retention and Reporting Requirements Are Unnecessary to Prevent Arbitrage, Are Onerous and Overbroad.

1. The Proposed Rules Are Unnecessary to Prevent Jurisdictional Arbitrage

Both the Commission and the RLECs have suggested that the claimed problems with rural call completion are due primarily to interexchange carriers' use of intermediate carriers to avoid high call termination charges.[21] Whether or not this was a major factor in the past, the situation today is that incentives to engage in jurisdictional arbitrage are rapidly diminishing. Rate-of-return LECs' intrastate terminating switched end office and transport rates and reciprocal compensation rates, if above interstate access rates, will be

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terminating provider has signaled that the called party is being alerted (NPRM, para. 14). Sprint does not oppose adoption of this rule.

[21] *See, e.g.*, NPRM, para. 6.

at parity with interstate access rates in a matter of weeks (July 1, 2013), and will continue to decrease until they reach bill-and-keep.[22] Thus, by July 1, 2013, there should be little incentive for carriers to use least cost routing as a means of avoiding higher intrastate access rates.[23]

Where reciprocal compensation rates are below access rates as of July 1, 2013, certain carriers might attempt to disguise the jurisdictional nature of their traffic in order to arbitrage termination expense (*i.e.*, falsely claim that access traffic is reciprocal compensation traffic). However, altering jurisdictional information is unlawful, and can and should be addressed through appropriate enforcement action.

It is not at all clear that the proposed data retention and reporting requirements can be adopted and implemented within a timeframe that would allow those proposed rules to play a meaningful role in preventing jurisdictional arbitrage. After completion of the written pleading cycle, the Commission will need some months – even acting with great expedition – to evaluate the record, come to reasoned conclusions, and issue a written order. Any new data collection rules will then be subject to the OMB/PRA approval process. Because many (perhaps all) carriers currently do not collect all of the data under consideration in the instant NPRM, additional implementation time will have to be factored in to allow them to develop programs to collect the additional call data. And, once the reports begin to flow into the Commission, the Commission will need time to analyze those reports and determine appropriate next steps. If any new rules go into effect by July 2014 (a very aggressive schedule), terminating access charges and

[22] *ICC/USF Transformation Order*, para. 801.

[23] There may be a very few instances in which a LEC and an IXC agree to a prospective rate for access traffic that is below tariffed levels. However, these agreements generally

reciprocal compensation rates will then have fallen by one-third of the differential between end office rates and $.005, providing even less incentive for carriers to engage in arbitrage as a means of avoiding terminating expense. The most effective means of minimizing jurisdictional arbitrage is the on-going implementation of the Commission's intercarrier compensation reforms, not adoption of detailed call completion retention and reporting rules.

2. The Proposed Rules Are Onerous

Sprint handles approximately 1.9 billion interexchange calls each month, including hundreds of millions of calls routed to an intermediate carrier. Sprint currently captures the information that is needed to properly route and bill these calls, including but obviously not limited to completed terminating calls and terminating call attempts by individual switch and trunk groups, and completed terminating calls and terminating call attempts routed over Sprint's Feature Group D network and routed to an intermediate carrier. However, our platforms are not designed to generate the type of reports envisioned in the NPRM. For example, Sprint captures traffic by telephone number in raw data format from the Call Detail record. However, Sprint does not treat, record or flag traffic terminating to rural destinations any differently than non-rural destinations. IT development work would need to be completed in order to create flags in our internal systems to identify rural and non-rural OCNs, and then sort out and exclude OCNs with fewer than 100 call attempts per month. Additional development work would be needed to create custom reports to aggregate billions of Call Detail Records with these flags so that the data could be summarized and presented in the form proposed in the NPRM.

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limit or prohibit application of the lower rate to wholesale traffic – that is, the IXC could not take advantage of the lower rate to offer least cost routing service to other IXCs.

Sprint does not currently (in the ordinary course of business) capture or compute overall call completion rates or call completion rates by individual exchanges (as noted, Sprint measures call completion rates by switch and trunk groups).

Sprint estimates, based on services offered by commercial vendors, that it would cost approximately $550,000 per month to deploy and maintain an off-the-shelf operational management and analytics platform to collect, sort, and store for a rolling 6-month period the call data proposed in the NPRM.[24] In addition, we estimate that compliance with the proposed rules would require hiring two additional employees, at a cost of approximately $100,000 per person per year (salary + benefits and other overhead). If the hundreds or thousands of other originating carriers that would be subjected to the proposed rules[25] each incurs even a fraction of Sprint's estimated costs, the industry cost of complying with these rules could easily amount to several billion dollars per year – dollars which could otherwise be spent to deploy broadband, upgrade networks, develop new products, lower prices, etc. It is difficult to imagine, given the volume of calls terminating to RLEC exchanges, that the benefits of the proposed rules would exceed a multi-billion dollar price tag.

[24] Although the NPRM proposes a 6-month data retention period, it is not clear whether carriers would be required to retain access to much older data in the event that the Commission has questions about or conducts an audit of the carrier's reports months or even years after the reports were originally filed. If the actual retention period exceeds 6 months, the costs would increase accordingly.

[25] The Commission has proposed that facilities-based interexchange carriers, CMRS providers, interconnected VoIP providers, and LECs would be subjected to the proposed rules. *See* NPRM, para. 13. The Commission's Initial Regulatory Flexibility Analysis (Appendix B of the NPRM) estimates that there will be tens of thousands of small entities (wired telecommunications carriers, LECs, ILECs, CLECs, IXCs, prepaid calling card providers, local resellers, toll resellers, other toll carriers, wireless telecommunications carriers, cable companies and program distributors, and other telecommunications entities that may be affected by the proposed rules.

If, contrary to Sprint's recommendation, the Commission does insist upon adopting industry-wide data retention and reporting requirements, such requirements should be scaled back substantially from those proposed in the NPRM. Rather than requiring collection and retention of the entire universe of records, the Commission should allow the originating carrier to instead do a statistically significant sample study – for example, to collect data for a 3-day period each month rather than a full month's data, or to conduct a week-long special study once per quarter.[26] The 6-month data retention period also is excessive, and should be reduced to no more than 3 months. If there is a problem with call completion, the end user or the LEC will, in the vast majority of cases, contact the originating carrier very soon after the problem occurs, not 6 months later.

Finally, Sprint vigorously opposes any suggestion that the proposed rules should extend to wireless-to-wireless calls.[27] As the Commission acknowledges, there is no evidence at all to suggest that there is a rural call completion problem with wireless-to-wireless calls (*id.*). Indeed, the majority of Sprint's wireless traffic to other wireless numbers is governed by settlement-free peering agreements and does not involve intermediate carriers. Where intercarrier compensation is removed from the equation, there also is no incentive to engage in jurisdictional arbitrage.

3. The Proposed Rules Are Overbroad, and Include Arbitrary and Undefined Elements

As demonstrated above, there is no public information which confirms that the claimed rural call completion problem is industry-wide and epidemic, *i.e.,* that long distance carriers collectively are providing unreasonably low quality service to rural end

[26] NPRM, para. 23.
[27] NPRM, para. 25.

users. To the contrary, information discussed above confirms that Sprint at least is not causing or experiencing a significant problem terminating rural calls. To impose very costly new rules on an entire class of carriers under such conditions makes little sense.

The negative impact of the proposed rules is compounded by the fact that they include numerous arbitrary and undefined elements. Although the Commission has asked for comment on whether certain of its proposed elements are reasonable, the proposed values appear to have been chosen at random. For example, there is no discernible basis for any of the following:

- The application of the proposed rules to originating carriers with 100,000 retail long distance subscribers (it may turn out that documented violations, such as outright refusal to complete calls to a given area because of high terminating rates, are being committed by small service providers, some of which may not even be considered telecommunications carriers);
- Measuring call answer rates by OCNs for which 100 or more calls were attempted;
- The 6-month call record retention period;
- The use of a maximum of 2 intermediate carriers in the safe harbor proposal;
- The 2% differential between rural and non-rural average call answer rates in the safe harbor proposal;[28]
- The 3% differential in the call answer rate for 95% of rural carriers as compared to the average rural call answer rate in the safe harbor proposal.

Moreover, the NPRM lacks clarity on three critical points. First, nowhere is call completion defined. Inclusion or exclusion of certain types of calls (*e.g.*, calls to invalid numbers, calls dropped because of radio frequency/cell coverage issues, calls abandoned by telemarketers or other users of autodialer devices, fraudulent traffic, calls which fail after reaching an access tandem, calls which fail because of inaccurate LERG data

[28] Surprisingly and inexplicably, the NPRM proposes a stricter rural/non-rural differential for the entire industry (2%), than the Commission accepted in a consent decree with Level 3 (5%).

provided by other carriers) can mean the difference between compliance and violation of the proposed rules. Certainly, it makes no sense to hold a carrier responsible for call completion rates in situations in which it has no control over key variables. Moreover, unless "call completion" is explicitly and completely defined, there is a substantial risk that carriers subject to the proposed reporting requirements will interpret the rule differently (and possibly in ways not intended or anticipated by the Commission) such that the filed reports are inconsistent, not comparable, or not useful.

Second, the Commission has not defined what outcome it hopes to achieve, or what practices it hopes to eliminate, in this proceeding. It has cited sections 201(b) and 202(a) of the Act as authority for its proposed reporting, record keeping and retention rules: "call routing practices that lead to rural call termination and quality problems may violate the prohibition against unjust and unreasonable practices in section 201(b), or may violate carriers' duty under section 202(a) to refrain from unjust or unreasonable discrimination in practices, facilities, or services."[29] However, nowhere in the NPRM does the Commission define or set forth guidelines about what precisely constitutes unjust and unreasonable call completion practices, so that carriers can take appropriate steps to avoid such practices. Surely carriers cannot be expected to implement and abide by an "I'll know it when I see it" standard. It is unfair and unreasonable to hold carriers to an undefined standard, and to penalize them for failure to meet such standard.

Third, the Commission has not defined the universe of "rural" carriers, whether the list of rural OCNs will be subject to change, or what party is to be responsible for ensuring the accuracy of the rural list. While the Wireline Competition Bureau has

[29] NPRM, para. 19.

invited comment on a list compiled by NECA,[30] it is difficult to assess the NECA list in the absence of a Commission definition of exactly what it means by "rural."

The Commission also should bear in mind that the situation here does not involve monopoly services or dominant service providers – the retail interexchange voice services market is extremely competitive, and regulatory intervention is more likely to be harmful than helpful. If end users are unable to complete calls or are otherwise dissatisfied with the quality of the long distance voice service they are receiving, they can readily switch to another service provider. It may be that some subscribers are willing to accept a lower quality of service in exchange for a lower price, and mandating a minimum level of service could eliminate lower cost options that certain end users may prefer. Given the competitiveness of this retail market, the Commission should avoid substituting regulation-based service standards in place of standards established in the open market.

Unless and until a case can be made that the proposed rules are necessary and reasonable, that their expected benefits exceed their costs, and that they will promote a clearly defined outcome, the Commission should decline to adopt such rules.

B. Targeted Actions Would Be More Effective at Curbing Bad Actors.

The Commission has taken aggressive and escalating action on several fronts to address rural call completion complaints. It has reiterated its "prohibition on call blocking,"[31] issued a declaratory ruling stating that rural call routing practices that lead to

[30] Public Notice released April 18, 2013 (DA 13-780), p. 1.
[31] *ICC/USF Transformation Order*, para. 734.

call termination and quality problems may constitute unjust and unreasonable practices,[32] established dedicated resources to handle rural call completion complaints, blogged about the need to address rural call completion issues,[33] and adopted a Consent Decree regarding Level 3's call completion practices to rural areas[34] and has other enforcement investigations on-going. In addition, multiple state regulatory bodies have initiated rural call completion proceedings, and Congressional concern remains high.[35] Cooperative activity in industry forums such as ATIS is on-going, and press coverage of the issue continues.

All of these activities send a clear signal to carriers that unreasonable call completion practices (however defined) will not be tolerated, and the impact of these actions (in particular, Commission enforcement actions) has not yet been fully felt. It is entirely reasonable to assume that the combined effect of intercarrier compensation reform, federal, state and Congressional regulatory activity, market pressure, and cooperative industry efforts will effectively address any remaining rural call completion concerns.

Indeed, the RLECs' own data indicates that progress is being made. For example, in a letter from the RLECs to the co-chairs of the NGIIF, the RLECs advised that their

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[32] *Developing a Unified Intercarrier Compensation Regime, Establishing Just and Reasonable Rates for Local Exchange Carriers, Declaratory Ruling*, 27 FCC Rcd 1351 (2012).

[33] "New Year Solutions for Rural Call Completion Problems," S. Gillett and J. Barnett, available at <http://www.fcc.gov/blog/new-year-solutions-rural-call-completion-problems>

[34] *In the Matter of Level 3 Communications, LLC*, File No. EB-12-IH-0087, *Order* adopting Consent Decree released March 12, 2013.

[35] *See, e.g.*, letter dated December 3, 2012, from 34 US Senators to FCC Chairman Genachowski.

own rural test calls showed substantial improvement from 2011 to 2012: in 2011, their study showed a "success" rate of 76%. The success rate increased to 83% in 2012.[36]

If, as Sprint suspects, any problem with rural call completion is limited to a small subset of carriers, targeted remedial action against any identified bad actors makes far more sense than imposition of onerous regulations on an entire class of carriers. Enforcement action against carriers found to be engaged in unlawful or unreasonable practices (*e.g.*, spoofing or deliberate blocking of legitimate traffic purely to avoid high intercarrier compensation charges) punishes such carriers for past bad behavior and subjects their future behavior to enhanced regulatory scrutiny (with failure to comply with agreed-upon standards leading to additional penalties).

Sprint further recommends that the Commission continue to work with industry forums to develop appropriate best practices guidelines. For example, carriers should be strongly encouraged to update and download LERG information expeditiously so that their routing tables reflect the correct CLLI codes for all terminating end offices. This would help to prevent situations in which a carrier sends a call to another carrier, or abandons a call as "unable to complete," because it is unable to determine to which end office the call is to be sent. Carriers should also be strongly encouraged to monitor the performance of their intermediate carrier partners carefully, and to explicitly forbid their intermediate carrier partners from engaging in unlawful activities such as deliberately changing calling party information or other signaling parameters.

[36] *See* letter dated May 17, 2012, from Jill Canfield, NTCA, and Robert Gnapp, NECA (on behalf of NECA, NTCA, OPASTCO and WTA), to Robin Beier, AT&T, and Amy Straton, Verizon Wireless (NGIIF Co-chairs), p. 5. Sprint cannot, of course, confirm the

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Charles W. McKee

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actual "success" rates because the RLEC studies are not publicly available, but the upward trend in the RLECs' results is significant.